IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 11814 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE SHARAD D.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BHAGUPARI KALUPARI GAUSWAMI - Petitioner(s)

Versus

STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :

MR HR PRAJAPATI for Petitioner No(s).: 1.

MR MR PRAJAPATI for Petitioner No(s).: 1.

RULE SERVED for Respondent No(s).: 1,2.

Mr.P.D.Bhate, AGP for Respondent No(s).: 3.

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CORAM : HONOURABLE MR.JUSTICE SHARAD D.DAVE

Date : 17/08/2005

ORAL JUDGMENT

1. By filing this petition, the petitioner detenu has challenged the detention order dated 30.05.2005 passed by the Police

Commissioner, Rajkot City in exercise of the powers conferred upon him under sub-section(1) of Section 3 of the Gujarat Prevention Anti-Social Activities Act, 1985 (“the Act” for short), as, the “bootlegger” and is required to be detained under the preventive detention, so that, he may not continue with such type of illegal activities.

2. Along with the detention order, the detenu was also served with the grounds of detention of the same date. In the said grounds, there is a reference to one case which is filed under the Bombay Prohibition Act. In the grounds of detention, the statements of certain witnesses have been recorded.

3. Learned advocate appearing on behalf of the petitioner detenu has submitted that when the detention order dated 30.05.2005 came to be passed, the petitioner was in judicial custody in connection with the offence registered against him under the Bombay Prohibition Act and there was no likelihood of continuing anti-social dangerous activities so as to disturb the public order by the detenu. It is submitted that there was no material before the detaining authority in respect of filing of the bail application or in respect of likelihood of petitioner being released on bail, which results in non-application of mind vitiating the detention order.

4. On the other hand, Mr.Bhate, learned AGP has tried to support the impugned detention order passed against the petitioner. Affidavit-in-reply is filed on behalf of respondent no.2.

5. The impugned order came to be challenged by the petitioner detenu on various grounds. It is not in dispute that the petitioner was in judicial custody when the detention order dated 30.05.2005 came to be passed by the detaining authority. Therefore, when the petitioner was in judicial custody, there was no likelihood of continuing antisocial dangerous activities so as to disturb the public order by the detenu. It is pertinent to note that likelihood of filing of bail application by the petitioner and likelihood of releasing the petitioner on bail, both are entirely different and separate propositions. It is required to be noted that there must be some credible material before the detaining authority to reach to the subjective satisfaction either about likelihood of filing of

bail application and/or likelihood of petitioner being released on bail. The facts of the present case are squarely covered by the decision of the Apex Court in the case of Amrutlal Vs. Union of India, reported in AIR 2000 SC 3675 wherein the Apex Court observed that there must be cogent materials before the officer passing the detention order that the detenu was likely to be released on bail. Admittedly, the petitioner was in judicial custody and there was no material before the detaining authority to reach to the subjective satisfaction that the detenu was likely to file the bail application and was likely to be released on bail and in absence thereof, the subjective satisfaction of the detaining authority is vitiated, and, therefore, the impugned detention order is required to be quashed and set aside.

6. In view of what is stated above, the petition is allowed. The order of detention dated 30.05.2005 is quashed and set aside. The detenu Bhagupari Kalupari Gauswami is ordered to be set at liberty forthwith if he is not required in connection with any other case. Rule is made absolute accordingly. Direct service is permitted.

(SHARAD D DAVE, J)

srilatha